



UNITED STATES SUPREME COURT

STATE OF LOUISIANA, EX REL
THOMAS C. JOYNER, JR.

Versus

C. PAUL PHELPS, WARDEN
DEPARTMENT OF CORRECTIONS
STATE OF LOUISIANA

NUMBER 77-1082

PETITION FOR CERTIORARI TO
THE SUPREME COURT OF LOUISIANA

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REPORTS OF OPINIONS BELOW

Petitioner, Thomas C. Joyner, Jr., seeks review of the decision of the Louisiana Supreme Court reported at 352 So.2d 187, Number 60,489 dated November 4, 1977 which decision is attached hereto and made a part hereof and designated as Appendix 1.

A previous decision in this case is reported at 344 So.2d 380, Number 59,245 dated April 20, 1977 which decision is attached hereto and made a part hereof and designated as Appendix 2.

STATEMENT OF JURISDICTIONAL GROUNDS

(i) The judgment sought to be reviewed in this case was dated and entered November 4, 1977;

2.

(ii) Rule 9, Section 6 of the Louisiana Supreme Court Rules provides that a rehearing will not be considered when the Court has merely granted or denied an application for a Writ of Certiorari, remedial or other supervisory writ;

(iii) This Court is authorized to review the judgment in question by Writ of Certiorari. U.S. Code, Title 28, Section 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1.

Did the majority of the Louisiana Supreme Court commit reversible error in finding that the affidavit for a search warrant adequately established

3.

probable cause for a search and seizure of evidence which was used against petitioner at his trial and alleged, by petitioner, to be unconstitutional as his rights were violated under the Fourth and Fourteenth Amendments of the United States Constitution and Article 1, §5 of the Louisiana Constitution of 1974?

2.

Did the majority of the Louisiana Supreme Court commit reversible error in finding that petitioner failed to show that a deal had been entered into between the State and petitioner's co-defendant in return for said co-defendant's testimony against petitioner at his trial on the merits, depriving plaintiff of his Sixth

4.

Amendment right to confront and cross-examine a witness called against him?

CONSTITUTIONAL PROVISIONS

(1) The Fourth Amendment to the United States Constitution:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

(2) The Sixth Amendment to the United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

5.

(3) Article 1, §5 of the Louisiana Constitution of 1974:

"Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court." (emphasis supplied)

STATEMENT OF THE CASE

Petitioner, Thomas C. Joyner, Jr., and his co-defendant, Reginald Kaese, were arrested on February 3, 1975 on a charge of first degree murder. On March 17, 1975 Joyner and Kaese were separately indicted on charges of first degree (capital) murder despite

the provisions of the Louisiana Code of Criminal Procedure Article 494 which provides for joint indictments of two or more persons accused of the same crime. Joyner was convicted of the crime of second degree murder on May 2, 1975, from which conviction his prior counsel filed no appeal.

Pursuant to a search warrant, various items of evidence, including a ball peen hammer, were seized in Kaese's apartment February 3, 1975. Prior to petitioner's trial, on April 8, 1975 Joyner sought to have the evidence seized in Kaese's apartment suppressed on the grounds of an unconstitutional search and seizure and citing Article 1, §5 of the 1974 Louisiana Constitution. The trial court denied said motion [April 8, 1975 TR-102]. The trial court

refused to consider the affidavit and warrant refusing to admit same into evidence.

At Joyner's trial on the merits, May 1, 1975 as the State prepared to introduce into evidence certain items seized from Kaese's apartment, Joyner's counsel objected on the grounds that the search and seizure were illegal and unconstitutional, citing Article 1, §5 of the Louisiana Constitution of 1974 as authority for the proposition that Joyner had standing to contest the search and seizure. The district court overruled the objection [May 1, 1975 TR-102]. Also, Joyner's attorney sought to introduce the affidavit and warrant into evidence, however, the district judge sustained the State's objection to this introduction [May 1, 1975 TR-103].

On September 9, 1976 Joyner instituted habeas corpus proceedings in the District Court. His application for writs was denied by the trial court November 24, 1976. An application for supervisory writs was taken to the Louisiana Supreme Court on the denial by the trial court which resulted in the writ being granted and an evidentiary hearing being ordered as to contentions one (1) and two (2) of Joyner's application for habeas corpus. Contention one (1) of said application pertained to the illegality of the search and seizure and contention two (2) dealt with the bias, interest and corruption of Kaese, who was the State's principal witness against Joyner.

At the evidentiary hearing held June 22, 1977 the trial court denied petitioner's application for writs. Again, the district court refused to admit into evidence the affidavit and search warrant for Kaese's apartment. However, upon application to the Louisiana Supreme Court for supervisory writs on the district court's decision, said affidavit and search warrant were attached to the proceedings and considered by the Louisiana Supreme Court.

In contrast to the holding of the district court, the Louisiana Supreme Court found that Joyner did have standing to contest the validity of the Kaese search, was adversely affected by that search and that the trial court was in error in refusing to admit the affidavit and search warrant into evidence.

However, after considering the affidavit and search warrant, the Louisiana Supreme Court found that the affidavit adequately established probable cause for the search.

In addition to the evidence seized from Kaese's apartment which was introduced into evidence against Joyner, Kaese turned State's evidence. At Joyner's trial, Kaese was asked if he had made a deal with the prosecution regarding his case in return for his testimony against Joyner. Kaese denied that any such deal had been made and cited religious beliefs as the motivating factor behind his testimony.

At the evidentiary hearing ordered by the Louisiana Supreme Court, evidence was introduced that Kaese has never been brought to trial, has been a trustee for

a considerable length of time, was participating in a work release program though under indictment for first degree murder and had a balance with the Sheriff's Office from said program of over \$2,100.00. In addition to this evidence, Lawrence Daigle testified that Kaese had told him that he had made a deal with the prosecution that he, Kaese, would serve three years in the Parish Jail. Also, Lawrence Daigle testified that Kaese showed him a paper confirming such. However, Kaese refused to answer most of the questions asked of him at the evidentiary hearing, taking the Fifth Amendment, for which he was held in contempt of court numerous times. In addition, Kaese refused to produce documents subpoenaed, for which he was also held in contempt of court. As of this time,

Kaese has not been punished for his contempt of court. The district court held that there was no serious evidence of any deal between Kaese and the prosecution. The Louisiana Supreme Court held that it could find no error with this decision of the trial court.

ARGUMENT

Petitioner argues that the search warrant for the co-defendant's apartment was defective as the affidavit did not provide a sufficient basis for a finding of probable cause. The warrant in question failed to meet the standards of Aguilar v. Texas, 378 U.S. 108 (1964) in that it fails to state sufficient facts upon which a detached and neutral magistrate could find that the informant was

"credible" or that his information was "reliable".

Also, examining the affidavit, petitioner shows that the victims were to meet an unidentified contact for the drug deal. The informant merely heard that one of the victims was with Kaese and there is nothing on the face of the warrant to show that Kaese was in any way connected with any criminal activity. Also, there is nothing in the warrant to justify an examining magistrate in finding probable cause that any of the items sought were in the apartment of either Joyner or Kaese. Therefore, petitioner submits that the warrant was based on mere suspicion and constitutionally defective as provided in Spinelli v. United States, 393 U.S. 372 (1969).

In fact, examining the affidavit and search warrant, it is impossible to tell whether Joyner is an active participant in a crime or an innocent bystander doing a favor for Cullars.

Petitioner also shows that he has been deprived of a Sixth Amendment constitutional right to confront and cross-examine his co-defendant, Kaese, effectively. At petitioner's trial, his co-defendant testified freely, waiving all Fifth Amendment rights. However, at the evidentiary hearing the co-defendant took the Fifth Amendment and refused to produce the subpoenaed documents. Kaese was held in contempt numerous times at the evidentiary hearing, however, he has not been punished for same.

Testimony was introduced at the evidentiary hearing that Kaese had told a fellow prisoner, Lawrence Daigle, that he had made a deal with the prosecution for three years in the Parish Jail in return for his testimony against Joyner. At the evidentiary hearing, this was not denied by Kaese. Additional evidence was introduced at the evidentiary hearing which showed that Kaese had never been brought to trial, was participating in a work release program though still under indictment for first degree murder and had a balance with the Sheriff's Office from the work release program of over \$2,100.00. Petitioner believes that sufficient evidence was introduced at the evidentiary hearing to show the bias,

interest and corruption of the co-defendant, Kaese, and that he had been deprived of a substantial constitutional right to effectively confront and cross-examine a witness called against him.

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CERTIFICATE

I hereby certify that a copy of the above and foregoing petition has been served on respondent, C. Paul Phelps, Warden, Department of Corrections , State

of Louisiana, by mailing a copy of same, postage prepaid, to Samuel C. Cashio, District Attorney in and for the Eighteenth Judicial District Court of Louisiana, P.O. Box 36, Maringouin, Louisiana 70757, this _____ day of February, 1978.

STEVE LEBLANC

APPENDIX 1

352 SOUTHERN REPORTER, 2d SERIES

STATE EX REL JOYNER v. PHELPS

Cite as, La., 352 So.2d 187

STATE of Louisiana ex rel. Thomas
C. JOYNER, Jr.

v.

C. Paul PHELPS, Warden, Dept. of
Corrections, State of Louisiana.

No. 60489.

Supreme Court of Louisiana.

Nov. 4, 1977.

In an original habeas corpus proceeding, the Supreme Court held that the accused was adversely affected, and had standing to contest validity of a search based upon affidavit and warrant.

Writ denied.

Summers, J., filed a statement concurring in part.

Marcus, J., concurred in result.

Calogero, J., dissented.

Dixon, J., filed a dissenting statement.

Searches and Seizures ¶7(26)

Accused was adversely affected, and had standing to contest validity of search based upon affidavit and warrant. (Per Sanders, C. J., and Tate, Jr., and Dennis, JJ., with two Justices concurring in result.) LSA-Const.1974, art. 1, § 5.

In re: Thomas C. Joyner, Jr., applying for supervisory writs.

Writ denied. As to issue 1: The trial

court was in error in refusing to permit the Kaese search warrant and affidavit into evidence. The relator was adversely affected and had standing to contest the validity of the Kaese search. La.Const. Art. 1, Sec. 5 (1974); *State v. Culotta*, 343 So.2d 977 (La.1976); *State v. Herbert*, 351 So.2d 434 (La.1977) (docket No. 58,726, opinion on rehearing rendered October 10, 1977). However, on examining the affidavit and warrant, which are attached to the proceedings, we find that the affidavit adequately establishes probable cause for the search. As to issue 2: We are unable to find error in the trial court's holding that the uncontradicted testimony of the prosecutor and of Kaese's attorney establishes that no plea bargain was entered into before Kaese's testimony at the trial (or to date), and that the Kaese bargaining discussions commenced only after the relator was convicted.

SUMMERS, J., is of the opinion writ should be denied, but does not agree that the trial judge was in error in refusing to permit the Kaese search.

DIXON, J., is of the opinion that the affidavit did not connect Kaese with a drug transaction and did not set out probable cause to support a search warrant to search Kaese's apartment, and would grant.

CALOGERO, J., is of the opinion writ should be granted.

MARCUS, J., concurs in the denial of this writ. See my dissenting opinion in *State v. Herbert*, No. 58,726 (La. Oct. 10, 1977), 351 So.2d 434.

APPENDIX 2

344 SOUTHERN REPORTER, 2d SERIES

. 380 La.

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STATE of Louisiana ex rel. Thomas
C. JOYNER, Jr.

v.

C. Paul PHELPS, Warden Department of
Corrections State of Louisiana.

No. 59245.

Supreme Court of Louisiana.

April 20, 1977.

In re: Thomas C. Joyner, Jr., applying
for supervisory writs.

Writ granted. Evidentiary hearing ordered as to contentions one (see *State v. Culotta*, La., 343 So.2d 977) and two, of the habeas application.

APPENDIX 3

The affidavit in support of the search warrant at issue in this case states:

"On January 15, 1975, Lt. Carson Bueto, East Baton Rouge Sheriff's Office received a call from Mr. Harvey DeLaune, Ass't. District Attorney, Bossier Parish, concerning the whereabouts of his son, Wade DeLaune, w/m and Homer Drew Cullars, w/m. Mr. DeLaune stated he had been contacted by a Bill Vick, a companion of Wade DeLaune and Homer Cullars fearing that something violent had occurred to them.

Vick told Mr. DeLaune that he was going to hold the sum of \$6,000.00 in cash for Wade and Homer while they negotiated for 200 pounds of marijuana to be sold at \$50 a pound. They all arrived

at Ryan Airport at 3:00 P.M. January 8, 1975, with Vick going to the Holiday Inn North on Airline Highway while Cullars and DeLaune made the contact for the deal.

Vick told Mr. DeLaune he saw Cullars at 6:00 P.M., same date, when he returned to the Holiday Inn to get the \$6,000.00. He told Vick he had to go on a boat to make the deal and that he would be back in two hours. At this time, Vick asked where Wade was and was told that he was with Reggie. Reggie was identified as Reginald Kaese, 8001 Jefferson Hwy., Apt. 35, Baton Rouge, Louisiana. Vick gave Cullars the \$6,000.00. As Cullars then left the room, Vick saw Cullars get into a car with Thomas Corry Joyner, 3132 Wyoming (sic) St., Apt. 5, Baton Rouge, Louisiana.

Vick stated that Cullars and DeLaune did xxx (sic) not show up the next morning, Jan. 9, 1975, therefore, he returned to Shreveport,. Lt. Bueto verified that Vick had indeed S (sic) registered at the Holiday Inn North on Jan. 8, 1975 and checked out on Jan. 9, 1975. Several days later, Vick became concerned and contacted Mr. DeLaune, Ass's (sic) D.A., in Bossier Parish.

At 2:45 P.M., Jan. 30, 1975, the body of an unknown white male surfaced approximately 100 yards from the Whiskey Bay Boat Landing located in Iberville, Parish, La.

At 2:50 P.M., Feb. 2, 1975, the body of a second unknown white male surfaced approximately one mile from the Whiskey Bay Boat Landing located in Iberville Parish, La.

Dental X-rays were made of both victims. A message was sent out nationwide stating that the bodies of two unknown white males had been recovered in Iberville Parish, La. As a result of this message, Chief Deputy Vol Dooley, Bossier Parish Sheriff's Office sent dental X-rays of Wade DeLaune and Homer Cullars to Iberville Parish. Dr. James Freeman, Pathologist, Iberville Parish, positively identified Wade DeLaune and Homer Cullars as the victims recovered from Whiskey Bay. Identification was made by dental X-rays on Feb. 2, 1975.

Both victims had fractured skulls, had been shot in the head with a shotgun, and were weighted down with an eight foot chain and concrete building block.